



# MEMORANDUM

## CITY OF TUALATIN

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Sherilyn Lombos, City Manager

**DATE:** December 12, 2011

**SUBJECT:** Work Session for December 12, 2011

- 1) **6:00 p.m. (20 min) – Options for Implementation of Chapter 11 of the Charter**  
In March 2011, the voters passed an amendment to the City Charter to require a vote of the electorate before certain actions may be taken by the City with regard to parkland. Attached is a memo from the City Attorney with information regarding implementation of Chapter 11 and some potential options.
- 2) **6:20 p.m. (20 min) – Transportation Development Tax**  
At the last work session, Council President Beikman mentioned that the Washington County Coordinating Committee is dealing with implementation of the TDT with regards to whether the TDT should be phased in to lessen the burden on businesses during these economic times. Community Development will provide some information regarding the potential impact to the options being discussed.
- 3) **6:40 p.m. (15 min) - Council Meeting Agenda Review, Communications & Roundtable.** This is an opportunity for the Council to review the agenda for the December 12, 2011 Council meeting and take the opportunity to brief the rest of the Council on any issues of mutual interest.



# MEMORANDUM

## CITY OF TUALATIN

**TO:** Honorable Mayor and Members of the City Council

**THROUGH:** Sherilyn Lombos, City Manager

**FROM:** Brenda Braden, City Attorney

**DATE:** 12/12/2011

**SUBJECT:** Implementation of Parks Charter Amendment

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### ISSUE BEFORE THE COUNCIL:

What steps should the City take to implement the Parks Charter Amendment that was passed in March 2011.

### EXECUTIVE SUMMARY:

In March 2011, the voters passed an amendment to the City Charter to require a vote of the electorate before certain actions may be taken by the City with regard to parkland. Those include the following:

1. The sale, lease, or other transfer of city park property;
2. The vacation or other change in ownership or legal status of a city park except for the granting of easements for underground utilities and uses that do not cause or constitute a major change in use;
3. Any development or construction in a city park that causes a major change in use of the park or some part of the park. "Major change" is defined as including "the development of roads, bridges, utility facilities, parking lots and buildings in a city park that are unrelated to the park uses for which the park was established, acquired or dedicated"; and
4. The construction or expansion in a city park of a street, road, parking lot or permanent above-ground structure, including buildings, power lines, motor vehicle or utility bridges and power lines unless they are needed primarily to serve the park.

Staff met with representatives of the Protect the Tualatin Parks ("PTP") group and the public utilities on several occasions to discuss next steps. The utilities represented in these discussions were PGE, NW Natural, Comcast, Frontier, and Clean Water Services. Although Clean Water Services decided to take no position as to what the City might decide to do, the other utilities are of the opinion that an ordinance is needed to clarify which activities they will be able to continue that will not require a vote. The PTP group met separately with the utilities to understand their concerns. From those meetings came proposed language the utilities and the PTP group could agree on that would honor the intent of the Charter amendment.

The question is now to decide how the Charter provision should be implemented. One approach would be to draft an ordinance that would attempt to define all of the undefined terms in the Charter amendment and adopt extensive new procedures for the operation of the City's parks. There are concerns with this approach: First, it would be a lengthy process involving many hours of staff time to draft and to meet with the interested parties to agree on language. Second, if there were a challenge to how the Charter was being interpreted or implemented, the court would look to the language in the Charter itself and the chief petitioners' statements in the Voters' Pamphlet, not to the ordinance. Third, there is the risk that adding more definition would create problems in dealing with situations that were not thought of during the writing of the ordinance.

Another approach would be to do nothing since the amendment has now passed and is self-implementing. Doing nothing would not provide the certainty that the utilities are seeking with regard to their operations.

A third approach would be to draft an ordinance that clarifies only the areas of current concern, i.e., those raised by the utilities and agreed upon by the PTP representatives. This would avoid the pitfall of trying to address situations that may never arise yet would provide some certainty to the utilities as to what they can do without needing voter approval. Such an ordinance would identify activities that do not constitute a major change in use, such as:

1. Emergency repair or construction required under existing agreements to restore services;
2. Assuming none of the following require additional right of way or an easement over park land, construction of a new power line, cable line, communication line, or transformer on an existing pole; replacing an existing pole with a taller or slightly larger pole or a wood pole with a steel pole; or adding a new above-ground cabinet or pedestal for underground facilities.

The ordinance would also define a few of the terms used in the ordinance, including: emergency, de minimus, maintenance, and temporary.

**RECOMMENDATION:**

Staff recommends that the Council direct staff to prepare an ordinance to address the concerns raised by the utilities and concurred with by the Protect Tualatin Parks representatives.

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**Attachments:**